(38)

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO.859 OF 2004

APPLICANT — Hukum Chand Banjare S/o Abhiram Lal Banjare, aged about 29 years, resident of Village Pendri Tarai, Thana Nandani Nagar, District Durg (CG)

Vs.

RESPONDENTS

1. The State Govt. of Chhattisgarh, Through – The Secretary, Department of Panchayat, Mantralaya, D.K.S. Building, Raipur (C.G.)
2. Collector, Durg (Panchayat Shaka Durg)
3. Deputy Director, Panchayat and Social Welfare, Durg (C.G.)
4. Sub Divisional Officer, Revenue, Durg District – Durg
5. Sarpanch, Gram Panchayat, Pendri Tarai, Tahsil Dhamdha, District – Durg (C.G.)
6. Satya Vijay, aged 35 years, S/o Late Shri Harsewak, Panchayat Karmi Sachiv, Gram Panchayat Vikas Khand – Dhamdha, Distt – Durg (C.G.)

Present: Mr. Sunil Sahu, learned counsel for the petitioner.
Mr. Yashwant Singh, learned G.A., for the State of C.G.
Mr. N.L. Soni, learned counsel for respondent No.6.

ORAL ORDER

(Passed on 20th February, 2006)

The petitioner when he was serving as Panchayat Karmi/Secretary in the service of the Gram Panchayat, Pendri Tarai, Tahsil Dhamdha, district Durg, the fifth respondent herein, he was removed from service by the Collector, Panchayat by order dated 07/06/2002 on the ground that an offence punishable under Section 376 of the IPC has been registered against him. Subsequently, the petitioner was acquitted, according to the

petitioner honourably, after due trial in Sessions Trial No.138 of 2002 by the learned Sessions Judge, Durg on 06/11/2003. Thereafterwards, the petitioner made an application on 01/03/2004 to the Collector, Panchayat requesting the letter to reinstate him into service. The Collector, Panchayat, forwarded that application to the Deputy Director, Panchayat, the third respondent herein, for consideration and the Deputy Director, Panchayat by his order dated 10/03/2004 rejected the request of the petitioner on the ground that after the petitioner was removed from service on 07/06/2002, in his place, one Manharan Lal Verma was appointed and, therefore, the petitioner's request could not be considered. Being aggrieved by the above order of the Deputy Director, Panchayat, this writ petition is filed.

(2) I have heard learned counsel for the parties. It was contended by the learned counsel for the petitioner that since the petitioner is acquitted in criminal case, i.e., Sessions Trial No.138 of 2002 by the learned Sessions Judge, Durg on 06/11/2003, he is entitled to be reinstated into service of the fifth respondent and the reason given by the Deputy Director, Panchayat, to reject the petitioner's claim, is totally untenable in law. On the other hand, learned counsel for the fifth respondent as well as learned counsel for the impleaded respondent No.6 would contend that since the sixth respondent was appointed in place of the writ petitioner when the petitioner was out of employment and since that appointment is on regular basis, the appointment of the sixth respondent cannot be disturbed and the petitioner cannot be directed to be reinstated in the place of the sixth respondent.

(3) Having heard learned counsel for the parties, a short question that arises for decision-making is whether the petitioner is entitled to be reinstated into service of the fifth respondent, Gram Panchayat, on account of his honourable acquittal in Sessions Trial No.138 of 2003. It is well settled that if services of an employee are terminated by the State – Employer on account of the pendency of criminal proceedings and ultimately such employee is acquitted in criminal proceedings honourably, it is his right to seek reinstatement into service otherwise that would tantamount to punishing an innocent employee for no fault of him and unheard. In the instant case, since the petitioner has been acquitted by the learned Sessions Judge, Durg on 06/11/2003 honourably, the fifth respondent, Gram Panchayat, ought to have reinstated the petitioner into service in pursuance of his request.

(4) Coming to the claim of the impleaded sixth respondent, it needs to be noticed, at the threshold, that the Court is not called upon to review the validity of his appointment and to find out whether his appointment was made on regular basis or his appointment was on ad hoc basis or on the basis of stop-gap arrangement. In whatever way or method the impleaded sixth respondent came to be appointed in place of the petitioner, it is trite, since the petitioner has a vested right to be reinstated into service in the post presently held by the sixth respondent, the sixth respondent has to make way for the petitioner. At this stage, the request made by the learned counsel for the fifth and six respondents has to be noticed. Learned counsel would appeal to the Court to issue direction to the fifth respondent Gram Panchayat to continue the services of the petitioner as well as the sixth respondent. I am afraid that the Court

is competent to issue such direction for the simple reason that it is not within the domain of the power of this Court under Article 226 of the Constitution to increase the cadre strength or to continue the service of an employee otherwise if there is no post or vacancy. However, it is made clear that if the sixth respondent could be accommodated in any other vacancy that may be existing in the service of the Gram Panchayat, it is for the Gram Panchayat to consider the request of the petitioner and not for the Court.

(5) In the result and for the foregoing reasons, the writ petition is allowed and the impugned order of the Deputy Director Panchayat, the third respondent, dated 10/03/2004 is quashed. A direction shall issue to the respondents to reinstate the petitioner into service with all consequential benefits, pecuniary and otherwise. In the facts and circumstances of the case, the parties shall bear their respective costs.

Sd/-
Chief Justice

Brajesh*